IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re:	U.S. Patent Application of Alan GRAVES *et al.*		
Appl. No.:	10/813,230	Art Unit:	3626
Filed:	March 31, 2004	Examiner:	Anita C. MOLINA
For:	INTEGRATED AND SECURE ARCHITECTURE FOR DELIVERY OF COMMUNICATION SERVICES IN A HOSPITAL		

REPLY BRIEF UNDER 37 CFR §41.41

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

This is a Reply Brief under 37 CFR §41.41 in response to the Examiner's Answer of November 9, 2010.

If any fees are due, Commissioner is hereby authorized to debit the required amount from deposit account no. 141315 and to advise the Appellant accordingly.

1. Patentability of claim 1 and the Examiner's statements in paragraph 10 of the Examiner's Answer

The Appellant respectfully disagrees with statements made by the Examiner in paragraph 10 of the Examiner's Answer.

a) The Appellant respectfully reiterates that claim 1 is patentable over U.S. Patent Application Publication 2004/0068421 by Drapeau ("Drapeau") and U.S. Patent 5,867,821 to Ballantyne ("Ballantyne") because of this cited art's failure to disclose the claimed feature of "the data routing entity being operative to **control access by the users at the plurality of delivery points to the healthcare data processing resources and to the non-healthcare data processing resources**".

The Examiner concedes (in the final Office Action of January 20, 2010 and on page 5 of the Examiner's Answer) that Drapeau fails to teach this claimed feature.

Ballantyne also fails to disclose this feature of claim 1 which is absent from Drapeau, as discussed on pages 12 and 13 of the Appeal Brief.

On page 17 of the Examiner's Answer, the Examiner states that "Ballantyne teaches in column 8, lines 7-64 controlling access by users to a master library and specifically describes controlled access of patient health records by care providers" and that "Ballantyne also teaches patients (as users) accessing the master library containing non-healthcare data at column 9, lines 57-67". From this, the Examiner concludes that "the combination of these two features of Ballantyne meet the limitations of *the data routing entity being operative to control access by the users at*

the plurality of delivery points to the healthcare data processing resources and to the non-healthcare data processing resources".

The Appellant respectfully disagrees. Specifically:

i) The passage of Ballantyne at column 8, lines 7 to 64 actually pertains to "identification and authentication of individuals requesting access to the health record database" (col. 8, line 1), *not* to individuals requesting access to the "entertainment services", i.e., the "non-healthcare data", referred to by the Examiner in the rejection. This is further demonstrated by Fig. 9A which illustrates that the process described in this passage starts with a request to access a medical record (block 320), and by this passage's reference to "physicians", "nursing staff", "ambulance personnel", "medical staff", "surgeons" and "psychiatrists" wishing to "gain access to medical information and/or the medical information network".

ii) As the Examiner herself states, the passage of Ballantyne at column 9, lines 57 to 67 teaches "patients (as users) accessing" the "entertainment services", *not* controlling access of the patients to the "entertainment services". There is no control on access to the "entertainment services" as the user is free to select any service he/she wants by a "simple numeric designation" (col. 9, ln. 57 to 67; and Fig. 10A, steps 354-356).

Clearly, therefore, as discussed on pages 12 and 13 of the Appeal Brief, Ballantyne's system does *not* control access by users to the "entertainment services". Rather, Ballantyne's system controls access to the "health care services" but does *not* control access to the

"entertainment services". That is, Ballantyne's system neither identifies nor authenticates individuals requesting access to its "entertainment services".

Ballantyne, like Drapeau, thus fails to disclose the claimed feature of "the data routing entity being operative to **control access by the users at the plurality of delivery points to the healthcare data processing resources and to the non-healthcare data processing resources**". In itself, this failure of the cited art to teach all of the claimed features precludes a finding of obviousness. In particular, the Examiner's assertion that "[i]t would have been obvious to one of ordinary skill in the art to include in the integrated patient station of Drapeau, the controlled access as taught by Ballantyne because the claimed invention is merely a combination of old elements" cannot support the Examiner's obviousness rejection since the claimed feature of controlling access to the non-healthcare data processing resources is not taught by the cited art, i.e., it is *not* an "old" element. On this basis alone, withdrawal of the Examiner's rejection is respectfully requested.

b) Not only does the combination of Drapeau and Ballantyne lack a claimed feature (which, in itself, precludes a finding of obviousness), it would *not* have been obvious for an ordinarily skilled person to modify Ballantyne's system so that it controls access to the "entertainment services" that are referred to by the Examiner.

On page 18 of the Examiner's Answer, the Examiner states that "it would have been obvious to use the controlled access for all users, including patients and care providers, and for all information found in the master library, including healthcare data and non-healthcare data because there is no unexpected or unpredictable results of that combination to one of ordinary skill in the art at the time of the invention".

The Appellant respectfully disagrees. In particular:

i) As discussed above, the Examiner's remarks on page 17 of the Examiner's Answer regarding alleged teachings of Ballantyne from which the Examiner apparently reaches this conclusion do *not* disclose controlling access to the "entertainment services" (i.e., to the "non-healthcare data"). Therefore, the "combination" referred to by the Examiner lacks a claimed feature. In itself, this precludes a finding of obviousness. Again, withdrawal of the Examiner's rejection is respectfully requested on this basis alone.

ii) As discussed on pages 14 and 15 of the Appeal Brief, it would not have been obvious for an ordinarily skilled person to modify Ballantyne's system so that it controls access to the "entertainment services" that are referred to by the Examiner since this would change a principle of operation of Ballantyne's system or render it unsatisfactory for its intended purpose. Ballantyne's system operates on the principle that it provides a patient with direct and immediate access to services by displaying to the patient on his/her PCS's screen "a sub-menu [...] identifying all the services that are available" (including the "entertainment services" referred to by the Examiner) and allowing him/her to freely select any of these services by a "simple numeric designation" (col. 9, ln. 57 to 67; and Fig. 10A, steps 354-356). Requiring authentication actions to be performed by the patient, such as providing a password, would go against Ballantyne's aim of making the patient's interaction with its PCS as simple as possible. This would also put a burden on the patient to remember such a password or otherwise know/remember what needs to be done to access the services. It would also not be readily apparent to an ordinarily skilled person how the authentication information would first be provided to the patients

and then remembered/used properly by the patients, particularly given patient turnover in hospitals and the patients' conditions/treatments. Clearly, therefore, modifying Ballantyne's system so that it controls access to the "entertainment services" as the Examiner contends would change the principle of operation of Ballantyne's system and render it unsatisfactory for its intended purpose. As held by the Courts and indicated in section 2143.01 of the MPEP, an obviousness rejection cannot be maintained when an asserted modification of the prior art would change the principle of operation of the prior art or would render the prior art unsatisfactory for its intended purpose (*In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959); *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). For this *additional* reason, withdrawal of the Examiner's rejection is respectfully requested.

The Examiner states on page 19 of the Examiner's Answer that "[t]he proposed combination does not render the prior art invention unsatisfactory for its intended purpose or change the principle of operation because patients would still have an automated system for distribution of services at the patient's domestic premises". The Appellant respectfully disagrees. First, this does not consider that, as discussed above, Ballantyne's system operates on the principle of providing a patient with direct and immediate access to services on the patient's PCS at the hospital by "simple numeric designation". Secondly, the Examiner's reference to "the patient's domestic premises" is irrelevant to the claimed subject-matter which is implemented in a *hospital*.

The Appellant therefore respectfully submits that claim 1 is patentable over Drapeau and Ballantyne. Withdrawal of the Examiner's rejection is respectfully requested.

2. Patentability of claim 9 and the Examiner's statement in paragraph 9 of the Examiner's Answer

The Appellant respectfully submits that claim 9 is patentable in view of its dependency on claim 1 for the reasons discussed on pages 17 to 20 of the Appeal Brief.

In addition, claim 9 recites "the non-healthcare data processing resources comprise a **non-healthcare authentication entity** for authenticating users at the delivery points claiming to be **non-healthcare users**". Neither Drapeau nor Ballantyne discloses such a "non-healthcare authentication entity".

In this regard, the Examiner's statement on page 6 of the Examiner's Answer that "Ballantyne teaches a security screening access process for both patients and physicians" is incorrect since, as discussed on pages 18 and 19 of the Appeal Brief, Ballantyne's system neither identifies nor authenticates a user classifying himself/herself as a "patient". Indeed, while it authenticates a user classifying himself/herself as "medical personnel", Ballantyne's system does *not* authenticate a user classifying himself/herself as a "patient"; rather, Ballantyne's system immediately displays to a user classifying himself/herself as a "patient" a menu allowing the user to freely select services of his/her choice. Clearly, therefore, there is no "non-healthcare authentication entity" in Ballantyne's system.

Claim 9 thus recites an additional feature which is not disclosed by the cited art. In itself, this failure of the cited art to teach all of the claimed features precludes a finding of obviousness. For this additional reason, the Appellant respectfully submits that claim 9 is patentable over the cited art. Withdrawal of the Examiner's rejection is respectfully requested.

CONCLUSION

It is respectfully submitted that claims 1-41 are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of the present patent application at an early date is respectfully solicited.

Respectfully submitted,

Date: January 10, 2011

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